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SELVAM SUNDRAMOORTY

v.

JABATAN HAL EHWAL AGAMA ISLAM NEGERI PULAU PINANG & ORS

B

HIGH COURT MALAYA, PULAU PINANG
BALIA YUSOF WAHI J
[CIVIL SUIT NO: 22-366-2008]
11 DECEMBER 2008

C

ISLAMIC LAW: *Jurisdiction - Syariah Courts - Conversion to Islam - Declaration by Syariah Court deceased a Muslim at time of death and should be buried in accordance with Muslim rites - Whether issue of conversion solely within jurisdiction of Syariah Court - Administration of*
D *the Religion of Islam (State of Penang) Enactment 2004, s. 61 - Enakmen Pentadbiran Agama Islam (Perak) 2004, s. 50*

CIVIL PROCEDURE: *Injunction - Application for - Order for defendants to surrender body of deceased to plaintiff - Declaration by*
E *Syariah Court deceased a Muslim at time of death and should be buried in accordance with Muslim rites - Preliminary objection raised - Whether Syariah Court has jurisdiction to declare deceased a Muslim - Whether issue of jurisdiction to be decided first before court goes into merits of application for injunction*

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An *ex parte* application (lampiran 2) was filed by the plaintiff seeking for an injunction, *inter alia*, to order the first, second and third defendant to surrender the body of Elangesvaran a/l Benedict to the plaintiff. The applicant averred that his brother, one Elangesvaran a/l Benedict, a Hindu, committed suicide and that
G after a post mortem was conducted, the body was kept by the third defendant. A police report lodged by an official of the first defendant (exh. S2) and a handwritten note purportedly made by the deceased which was unsigned and undated (exh. S3) indicated that Elangesvaran a/l Benedict aged 31 years old had
H converted to Islam voluntarily adopting the name Harun Benedict Abdullah and witnessed by one Zamrie Othman. The plaintiff contended that the allegation by the second and third defendant that the deceased had converted to Islam was baseless and without any proof and as such had no right to claim the body
I from the third defendant. Hence this application. At the outset, the plaintiff brought up the preliminary issue of jurisdiction.

According to the plaintiff, the Syariah Court had no jurisdiction to declare the deceased a Muslim. The Mahkamah Tinggi Syariah Parit Buntar had on 4 July 2008 declared that the deceased was a Muslim at the time of his death and that the second defendant be allowed claim to the body of the deceased from the third defendant and be buried in accordance with the Muslim rites. The plaintiff submitted that it was for the defendants to prove that the conversion was lawful and done in accordance with the provisions of the Administration of the Religion of Islam (State of Penang) Enactment 2004. The first defendant in turn replied that the issue of conversion was solely within the jurisdiction of the Syariah Courts. Further reliance was placed on the provisions of s. 61 of the Administration of the Religion of Islam (State of Penang) Enactment 2004 and s. 50 of the Enakmen Pentadbiran Agama Islam (Perak) 2004.

Held (dismissing application in lampiran 2):

(1) Matters relating to conversion to the Islamic religion is solely within the jurisdiction of the Syariah Courts and the authorities submitted by the first defendant clearly laid down the law on this subject matter. The preliminary issue of jurisdiction would have to be decided first before this court can go into the merits of the application for injunction. Even though the relief sought by the plaintiff here was one of injunction, but the subject matter and the circumstances of the case and the issues arising in the matter was so interwoven with the issue of jurisdiction of the court touching on the subject matter of conversion of the deceased to Islam. In entertaining the application in lampiran 2, this court could not divorce itself from the subject matter and issue of conversion which had been dealt by the Mahkamah Tinggi Syariah Parit Buntar. This court lacked the jurisdiction to decide on the issue of conversion of the deceased. (para 10)

Case(s) referred to:

Chang Ah Mee v. Jabatan Hal Ehwal Agama Islam & Ors [2003] 1 CLJ 458 HC ***(refd)***

Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 SC ***(refd)***

Kaliammal Sinnasamy lwn. Pengarah Jabatan Agama Islam Wilayah Persekutuan & Yang Lain [2006] 1 CLJ 753 HC ***(refd)***

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan dan Yang Lain [2007] 3 CLJ 557 FC ***(refd)***

Legislation referred to:
Administration of the Religion of Islam (State of Penang) Enactment 2004, s. 61
Enakmen Pentadbiran Agama Islam (Perak) 2004, s. 50

For the plaintiff - Karpal Singh (RSN Rayer with him)
For the defendant - Yusnita Yusoff
For the 2nd defendant - Asmuni Awi (Hatijah Mohd Salleh with him)
For the 3rd defendant - Mohd Ghazali

Reported by Suhainah Wahiduddin

JUDGMENT

Balia Yusof Wahi J:

[1] Lampiran 2 is an *ex parte* application filed by the plaintiff seeking for an injunction in the following terms:

(a) Satu injunksi mengarahkan Defendan Pertama, Defendan Kedua dan Defendan Ketiga dan/atau ejen-ejen dan/atau pekerja-pekerja mereka menyerahkan mayat Elangesvaran a/l Benedict (No. K/P: 751023-08-5543 (simati) kepada Plaintif dan/atau saudara-mara simati dan/atau pekerja-pekerja dan/atau ejen-ejen Plaintif;

(b) Satu injunksi melarang Defendan Pertama dan Defendan Kedua daripada mengambil atau menuntut milikan mayat Elangesvaran a/l Benedict (No. K/P: 751023-08-5543) (simati) dan dalam apa cara pun masuk campur atau mengganggu penyerahan mayat Elangesvaran a/l Benedict (No. K/P: 751023-08-5543) (simati) kepada Plaintif dan penyempurnaan upacara pengkebumian menurut adat resam agama Hindu;

(c) Satu injunksi interim mengarahkan Defendan Pertama, Defendan Kedua dan Defendan Ketiga dan/atau ejen-ejen dan/atau pekerja-pekerja mereka menyerahkan mayat Elangesvaran a/l Benedict (No. K/P: 751023-08-5543) (simati) kepada plaintiff dan/atau saudara-mara simati dan/atau pekerja-pekerja dan/atau ejen-ejen Plaintif sementara menunggu permohonan ini didengar dan diputuskan secara muktamad oleh Mahkamah yang mulia ini;

(d) Satu injunksi interim melarang Defendan Pertama dan Defendan Kedua daripada mengambil atau menuntut milikan mayat Elangesvaran a/l Benedict (No. K/P: 751023-08-5543 (simati) dan dalam apa cara pun masuk campur atau

mengganggu penyerahan mayat Elangesvaran a/l Benedict (No. K/P: 751023-08-5543) (simati) kepada Plaintif dan penyempurnaan upacara pengkebumian menurut adat resam agama Hindu sementara menunggu permohonan ini didengar dan diputuskan secara muktamad oleh Mahkamah yang mulia ini;

(e) Gantirugi;

(f) Kos; dan

(g) Perintah-perintah lain yang difikirkan patut dan suaimanfaat oleh Mahkamah yang mulia ini.

[2] In his affidavit in support, the applicant avers that his brother, one Elangesvaran a/l Benedict (K/p No: 751023-08-5543), a Hindu, committed suicide on 22 June 2008. After a post mortem was conducted the body was kept by the third defendant. In the meantime, it was decided by the second defendant that the deceased will be buried according to the Muslim rites as the deceased had prior to his death embraced the religion of Islam. A police report was lodged by one Abd. Karim bin Mohd. Ibrahim, an official of the first defendant to that effect and exhibited as exh. S2. In the said report it is stated that the deceased had on 9 January 2007 at Jabatan Agama Islam, Lebuh Pantai, Pulau Pinang converted to Islam and was witnessed by one Sazali bin Dan, KPT 610914-02-5975 and Zamrie bin Othman KPT 700102-07-5829. The deceased's Muslim name was Harun Benedict bin Abdullah. A hand written note purportedly made by the deceased which is unsigned and undated is exhibited as exh. S3 indicating that Elangesvaran a/l Benedict aged 31 years old has converted to Islam voluntarily adopting the name Harun Benedict and witnessed by Zamrie bin Othman.

[3] The plaintiff contends that the allegation by the second and third defendant that the deceased has converted to Islam is baseless and without any proof and as such have no right to claim the body from the third defendant. Hence this application.

[4] Although originally Lampiran 2 is an *ex parte* application, the parties had when appearing before the court agreed for the same to be heard *inter partes* on 26 June 2008. The matter was then adjourned to 4 July 2008 enable parties to file their respective affidavits. This application came up for full hearing before me on 4 July 2008.

[5] Affidavits in reply were filed by the first and second defendants in Lampiran 7 and 10 respectively.

[6] The first defendant in his affidavit in reply in Lampiran 7 states that the deceased had converted to Islam on 9 January 2007 at the Pejabat Agama Daerah Seberang Perai Selatan, Pulau Pinang before one Ustaz Hasnan bin Hasan, the Penyelia Qariah Pejabat Agama Islam, Daerah Seberang Perai Selatan and witnessed by one Zamri bin Othman (K/p: 700102-07-5029) and Sazali bin Dan (K/p: 610914-02-5275). All the three named persons has filed their affidavits in the Mahkamah Tinggi Syariah, Parit Buntar in Tuntutan Mahkamah No: 08100-99-0081-2008 and exhibited as exhs. "FAR1A", "FAR1B" and "FAR1C" in Lampiran 7. It is further averred in the said Lampiran 7 that upon his conversion to Islam the deceased has adopted the name of Harun Benedict bin Abdullah and two letters from the Pejabat Agama Daerah Seberang Perai Selatan dated 9 January 2007 and Jabatan Mufti Pulau Pinang dated 23 June 2008 were produced as exhs. "FAR2" and "FAR3" respectively. In essence, the first defendant denies the allegation of the plaintiff.

[7] In the affidavit in reply of the second defendant in Lampiran 10 besides repeating what has been stated by the first defendant, the second defendant stated that an application was filed at the Mahkamah Tinggi Syariah Parit Buntar for a declaration that the deceased was a Muslim at the time of this death. The application was filed on 25 June 2008 and came up before the Mahkamah Tinggi Syariah Parit Buntar on 27 June 2008. On the said date, the court ordered that the deceased's wife, one Thanaletchumy a/p Veloo @ Suraya binti Abdullah be made a party as the second defendant in the said application. Exhibit "DJS7" in Lampiran 10 refers to the said order of the court. It is further stated by the second defendant that the plaintiff has failed to disclose a material fact surrounding the circumstances of this application for injunction regarding the fact of the deceased's wife's conversion to Islam. Exhibit "DJS8" in the second defendant's affidavit in reply in Lampiran 10 bears testimony to the fact.

[8] At the outset of the hearing of this application, learned counsel for the plaintiff, Mr. Karpal Singh brought up the preliminary issue of jurisdiction. The facts and issues raised by the plaintiff in his affidavit in support (Lampiran 3) revolves solely on the issue of religion and the conversion of the deceased to Islam.

Learned counsel contended that the Syariah Court has no jurisdiction to declare that the deceased was a Muslim. The Mahkamah Tinggi Syariah Parit Buntar has on 4 July 2008 declared that the deceased was a Muslim at the time of his death and that the second defendant be allowed to claim the body of the deceased from the third defendant and to be buried in accordance with the Muslim rites. In his submission, Mr. Karpal Singh relied on the cases of *Chang Ah Mee v. Jabatan Hal Ehwal Agama Islam, Majlis Ugama Islam Sabah & Ors* [2003] 1 CLJ 458; and *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 as authorities conferring jurisdiction to the civil courts on the matter of conversion to the Islamic faith. Mr. Karpal Singh submits that it is for the defendants to prove that the conversion was lawful and done in accordance with the provisions of the Administration of the Religion of Islam (State of Penang) Enactment 2004 in particular Part 1X of the said Enactment. In counsel's submission, the affidavits in reply disclose no sufficient evidence.

[9] Learned counsel for the first defendant in turn replied that the issue of conversion is solely within the jurisdiction of the Syariah Courts and two authorities were submitted in support of her contention namely, *Kaliammal Sinnasamy lwn. Pengarah Jabatan Agama Islam Wilayah Persekutuan & Yang Lain* [2006] 1 CLJ 753 and *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan dan Yang Lain* [2007] 3 CLJ 557. Both counsels for the second and third defendants share the views and adopt in full the submissions of the first defendant. Further reliance was placed on the provisions of s. 61 of the Administration of the Religion of Islam (State of Penang) Enactment 2004 (No 4/2004) and s. 50 of the Enakmen Pentadbiran Agama Islam (Perak) 2004 (Bil: 4/2004) on the issue of jurisdiction of the courts.

[10] I fully agree with the submissions of the learned counsel for the first defendant that matters relating to conversion to the Islamic religion is solely within the jurisdiction of the Syariah Courts and the authorities submitted by the first defendant clearly lay down the law on this subject matter. I also agree with the stand taken by the parties in this application that the preliminary issue of jurisdiction would have to be decided first before this court can go into the merits of the application for injunction. In

my considered view, eventhough the relief sought by the plaintiff here is one of injunction, but the subject matter and the circumstances of the case and the issues arising in the matter is so interwoven with the issue of jurisdiction of the court touching on the subject matter of conversion of the deceased to Islam. In entertaining the application in Lampiran 2, this court cannot divorce itself from the subject matter and issue of conversion which has been dealt by the Mahkamah Tinggi Syariah Parit Buntar. At the risk of repetition, once again I categorically state that all the facts and issues raised by the parties in their respective affidavits are solely devoted to the issue of conversion of the deceased. While the plaintiff contends that this court has the jurisdiction to decide on the matter, the second and third defendants say otherwise. In the circumstances and in the light of the authorities submitted before me, I hold that this court lacks the jurisdiction to decide on the issue of conversion of the deceased and henceforth the application in Lampiran 2 is hereby dismissed with costs.